

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SUNGJIN INC CO., LTD., :  
Plaintiff, : ORDER  
: 19 Civ. 9496 (GBD) (GWG)  
: -v.-  
: ITOCHU CORPORATION et al., :  
: Defendants. :  
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**GABRIEL W. GORENSTEIN, United States Magistrate Judge**

On March 3, 2020, the Court ordered plaintiff to show cause why this matter should not be dismissed for lack of subject matter jurisdiction. See Order, filed Mar. 3, 2020 (Docket # 35). At plaintiff's request, it was given leave to file an amended complaint. See Memo Endorsement, filed Mar. 12, 2020 (Docket # 37). It filed a first amended complaint on March 16, 2020. See First Amended Complaint, filed Mar. 16, 2020 (Docket # 38) ("FAC"). On March 18, 2020, some of the defendants filed a letter asserting that the FAC suffered from the same jurisdictional defects as the original complaint. See Letter, filed Mar. 18, 2020 (Docket # 41). Plaintiff has now filed a letter seeking leave to file a second amended complaint. See Letter, filed Mar. 18, 2020 (Docket # 42).

The Court grants plaintiff leave to file the proposed second amended complaint. By making this ruling, however, the Court is not opining on whether the allegation that defendant Kenneth Horowitz is "doing business" as Bag Studio, LLC negates the relevance of the citizenship of Bag Studio, LLC for purposes of assessing subject matter jurisdiction. See, e.g., Airlines Reporting Corp. v. S and N Travel, Inc., 58 F.3d 857, 861 (2d Cir. 1995) ("'[C]itizens' upon whose diversity a plaintiff grounds jurisdiction must be real and substantial parties to the controversy.'") (citations omitted). If Kenneth Horowitz was acting as an agent of Bag Studio, LLC in engaging in the conduct alleged in the complaint, the citizenship of Bag Studio, LLC must be assessed.

Accordingly, the plaintiff is directed to file an affidavit on or before April 7, 2020, indicating whether Bag Studio, LLC is a legal entity. If it is a legal entity, the affidavit shall set forth (1) the names of each of its members, (2) the citizenship of each of its members, and (3) what facts indicate that the conduct by Kenneth Horowitz alleged in the SAC was in his individual capacity and did not reflect conduct by Bag Studio, LLC. The basis for the affiant's knowledge as to any of these matters shall also be set forth.

SO ORDERED.

Dated: March 18, 2020  
New York, New York

/s/  
GABRIEL W. GORENSTEIN  
United States Magistrate Judge